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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

MDL No. 1917

Case No. 07-cv-5944 JST

This Document Relates To:

*Government of Puerto Rico v. Panasonic
Corporation of North America, et al, Orig C.A
No. 3:19-01246*

**GOVERNMENT OF PUERTO RICO'S
MOTION TO SERVE FOREIGN
DEFENDANTS THROUGH THEIR
UNITED STATES-BASED COUNSEL
UNDER FEDERAL RULE CIVIL
PROCEDURE 4(F)(3)**

Courtroom: 9, 19th Floor
Judge: Honorable Jon S. Tigar

1 **TO THE HONORABLE COURT ALL PARTIES AND THEIR ATTORNEYS:**

2 Per Federal Rule of Civil Procedure 4(f)(3), the Government of Puerto Rico,
3 through undersigned counsel, moves the Court for permission to serve certain
4 foreign Defendants through their respective U.S. counsel.

5 This request would comport with due process as it is reasonably calculated to
6 apprise the foreign defendants of this case and afford them an opportunity to appear
7 and defend it. They have already received notice of this Complaint and the
8 underlying allegations, but despite Plaintiff's best efforts, the foreign Defendants
9 remain unserved. During the 13 years of this MDL, the unserved foreign Defendants
10 are either represented by counsel or are affiliated with other defendants who are—or
11 both. Since service through their U.S. counsel would provide them with notice of
12 this lawsuit, which they already have anyway, and no international agreements
13 prohibit this type of service, the Plaintiff requests the Court's permission to serve
14 them through their U.S. counsel.

15 Further, several rulings in this case have permitted this very request. The
16 Court has already permitted plaintiffs in this case to do so. *In re Cathode Ray Tube*
17 *CRT Antitrust Litig.*, 27 F. Supp. 3d 1002, 1009 (N.D. Cal. 2014) ("Court issued an
18 Order permitting some of the [direct-action plaintiffs] to serve Defendant [Beijing-
19 Matsushita Color CRT] by mail at its D.C. counsel's offices under Rule 4(f)(3)"); *In*
20 *re Cathode Ray Tube (CRT) Antitrust Litig.*, MDL-No. 1917, 07-5944-SC, 2008
21 U.S. Dist. LEXIS 111384, *32–33 (N.D. Cal. Sept. 03, 2008) (granting Rule 4(f)(3)
22 service upon Koninklijke Philips Electronics N.V. and Toshiba Corporation, while
23 all other defendants affected by motion agreed to service); *see also In re Cathode*
24 *Ray Tube Antitrust Litig.*, No. , 2014 U.S. Dist. LEXIS 78902, *80, 2014 WL
25 2581525, (N.D. Cal. June 09, 2014) (Philips Electronics and Royal Philips, when
26 faced with possible Rule 4(f)(3) order, agreed to accept service "under protest").
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2 **I. INTRODUCTION**

3 In 2019, the Government of Puerto Rico through its Attorney General filed this
4 case on behalf of the Government's consumers and government entities that paid
5 inflated prices for the CRT products of the 43 Defendants named in its Complaint.
6 The Government has served seven of the 12 United States defendants. The other
7 defendants, mostly international companies related to those domestic companies
8 already served with the Complaint, have not been served.¹

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11 The Attorney General now seeks the Court's permission to serve the remaining
12 Defendants through the alternatives available under Civil Rule 4(f)(3), namely
13 service through Defendants' counsel. The Attorney General requests service on
14 already appearing U.S. counsel because service on them does not implicate the
15 Hague Convention rules with its complicated procedures and long delays, much less
16 have to take into consideration countries, such as Taiwan, that are not signatories to
17 the Hague Convention.

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21 The Court has already permitted plaintiffs in this case to do so. *In re Cathode*
22 *Ray Tube CRT Antitrust Litig.*, 27 F. Supp. 3d 1002, 1009 (N.D. Cal. 2014) ("Court
23 issued an Order permitting some of the [direct-action plaintiffs] to serve Defendant
24 [Beijing-Matsushita Color CRT] by mail at its D.C. counsel's offices under Rule
25 4(f)(3)"); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, MDL-No. 1917, 07-5944-

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27 ¹ The Government has served two foreign Defendants, Samsung SDI Mexico S.A. de C.V. located in Mexico as well
28 as Koninklijke Philips Electronics, N.V.

1 SC, 2008 U.S. Dist. LEXIS 111384, *32–33 (N.D. Cal. Sept. 03, 2008) (granting
 2 Rule 4(f)(3) service upon Koninklijke Philips Electronics N.V. and Toshiba
 3 Corporation, while all other defendants affected by motion agreed to service); *see*
 4 *also In re Cathode Ray Tube Antitrust Litig.*, No. , 2014 U.S. Dist. LEXIS 78902,
 5 *80, 2014 WL 2581525, (N.D. Cal. June 09, 2014) (Philips Electronics and Royal
 6 Philips, when faced with possible Rule 4(f)(3) order, agreed to accept service “under
 7 protest”).

8 **II. STATEMENT OF RELEVANT FACTS AND PROCEDURAL** 9 **HISTORY.**

10 After the Judicial Panel on Multidistrict Litigation transferred this case on
 11 February 05, 2020, this Court conducted a case-management conference on June 24,
 12 2020.² The Court ordered the Government to submit this motion by July 10; the
 13 Defendants to respond by July 24; and the Government to reply by July 31.

14 As of July 10, the Government has successfully served seven Defendants located
 15 in the United States as well as two international entities, one located in Mexico and
 16 one in Netherlands.³ But it has been less successful with the remaining Defendants,
 17 particularly those located outside of the United States. The Government asks this
 18 Court to exercise its discretion to allow alternative methods in the interest of moving
 19 this case with all deliberate speed.
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21 The Government’s 43 Defendants fall into 11 groups of Defendants: 1)
 22 Chunghwa; 2) Hitachi; 3) IRICO; 4) LG; 5) Panasonic; 6) Philips; 7) Samsung; 8)
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 27 ² ECF #5763, Joint Case-Management Conference Statement.

28 ³ One is Samsung SDI Mexico S.A. de C.V. in Mexico, and the other is Koninklijke Philips Electronics, N.V. in Netherlands

1 Samtel; 9) Tatung; 10) Thai CRT; and 11) Toshiba.⁴ Of the 43 Defendants, 34 are
2 foreign business entities from 11 countries⁵ that are not yet served (“Foreign
3 Defendants”).⁶ The Government attaches a table that shows each of the 43
4 Defendants, when it served each Defendant, each Defendant’s principal location, its
5 counsel of record, and the date of counsel’s appearance.⁷ Before the case’s transfer,
6 the Government had prepared Letters Rogatory as well as established a process
7 server to begin service on the foreign defendants.⁸ But with the transfer, the case’s
8 circumstances have changed. The Government spent over \$26,000 to translate the
9 complaints into various languages as well as for a service processor.⁹

13 These Foreign Defendants have known about the allegations related to this case
14 since the initial class cases began in 2007—nearly all of them were defendants to the
15 original cases transferred from the MDL in 2007.¹⁰ Further, United States law firms
16 already represents all but one of the 11 Defendant groups.¹¹ Moreover, U.S. counsel
17 represent 25 of the 34 unserved Foreign Defendants. And the remaining 11 have
18 representatives through related entities: 10 are affiliated with a group of Defendants
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22 ⁴ See the Government’s Complaint.

23 ⁵ Those countries are Brazil, China, Hong Kong, India, Indonesia, Japan, Malaysia, Mexico, Netherlands, Singapore,
24 South Korea, Taiwan, and Thailand.

25 ⁶ The Government has served the Philips entity in Netherlands as well as the Samsung entity in Mexico.

26 ⁷ See Exhibit 6 attached to Exhibit A, Declaration of Plaintiff’s Counsel.

27 ⁸ See Paragraph 8.

28 ⁹ See Exhibits 1–5, attached to Exhibit A, Declaration of Plaintiff’s Counsel.

¹⁰ See ECF #1, pg. 10, Case MDL No. 1917; See ECF #66, pgs. 1–2, Case MDL No. 1917 (naming all the same Defendants as the Government except for three defendants, the Chunghwa Defendants and P.T. Tosummit).

¹¹ The only Defendant group not currently represented is Thai CRT.

1 that is already represented by counsel: one of the currently unrepresented
2 Defendants is a Chunghwa company, and Farmer Brownstein Jaeger LLP already
3 represents the other Chunghwa entity; a is a Hitachi entity, and Morrison & Foerster
4 LLP already represents the five other Hitachi entities; another is a Panasonic
5 company, and Winston and Strawn LLP is defending four of the other Panasonic
6 defendants; and although two Toshiba entities are unrepresented, White & Case LLP
7 represents the other five Toshiba entities.¹² Thus, in some cases, counsel even
8 represents multiple entities within that Defendant's group.

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11 With the Government's case pending since 2019 but only recently approved for
12 entry into this MDL in February 2020, there is no reason to delay this case. The
13 Foreign Defendants already have actual notice of these cases, having defended them
14 for nearly two decades in through this MDL. Serving the complaints on their U.S.
15 counsel is reasonably calculated to inform them of this action as well as afford them
16 an opportunity to defend itself in this case. As is required by Rule 4(f)(3), such a
17 request also does not offend any international agreement.

18 **III. LEGAL ARGUMENT**

19 Under Civil Rule 4(f)(3), service of foreign defendants through U.S. counsel
20 (and even e-mail) is a well-established practice that is reasonably calculated to
21 acquaint Defendants of an action they already know exists. *Rio Props., Inc. v. Rio*

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27 ¹² Attorneys from White & Case even called Plaintiff's counsel to indicate that we had the wrong address for one of
28 the Toshiba entities, but declined to provide the correct address. *See Raynor v. District of Columbia*, No. 14-0750
(RC), (D.D.C. Nov. 03, 2017) (approving but not ordering defendants' counsel's providing address and Social
Security number).

1 *Int'l Interlink*, 284 F.3d 1007, 1016 (9th Cir. 2002) (citations omitted); Those
2 methods include “delivery to the defendant’s attorney ... and most recently, email.”
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4 *Id.* (citations omitted); *see S.E.C. v. Nagaicevs*, No. 12-cv-00413-JST, 2013 U.S.
5 Dist. LEXIS 985777, *4, 2013 WL 3730578 (N.D. Cal. July 12, 2013), citing *Rio*
6 *Props.* at 1016. In *Nagaicevs*, this Court granted default judgment after plaintiff
7 served the defendant pursuant to Rule 4(f)(3) via email and regular mail to
8 defendant’s addresses in Seychelles and Ukraine. *Id.* at *4. In fact, “[c]ourts in the
9 Ninth Circuit have ordered service through United States-based counsel even when
10 counsel has refused to accept service on the ground that they do not represent the
11 international defendants.” *Cal. Beach Co., LLC v. Exquiline, Inc.*, No. 20-cv-01994-
12 TSH, 2020 U.S. Dist. LEXIS 119027, *8 (N.D. Cal. July 07, 2020) (citations
13 omitted).

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17 Here, no different than the prior orders in this case, serving the Foreign
18 Defendants through their U.S. counsel satisfies the constitutional due-process
19 fairness requirement of providing notice of this pending action and does not violate
20 international law. The Foreign Defendants already have notice of this very long
21 pending case, already have counsel, and will receive the complaint once presented to
22 their attorneys based in the United States. Therefore, the Court should permit the
23 Government to serve the Foreign Defendants through U.S.-based counsel.
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1 **A. Civil Rule 4(f)(3) permits service of foreign companies through**
 2 **U.S.-based counsel.**

3 When defendants are in a foreign country, Civil Rule 4(h)(2) permits service “in
 4 any manner prescribed by Rule 4(f) for serving an individual...”¹³ Civil Rule
 5 4(f)(3) allows the Government to serve them “by other means not prohibited by
 6 international agreement, as the court orders.”¹⁴

7 While Rule 4(f) has three options for service, there is no hierarchy as each option
 8 stands “on equal footing.” *Rio Props.*, 284 F.3d at 1015 (“court-directed service
 9 under Rule 4(f)(3) is as favored as service available under Rule 4(f)(1)
 10 [internationally agreed means, such as the Hague Convention] or Rule 4(f)(2)
 11 [manner prescribed by foreign county’s law, such a letter of rogatory]”); *see*
 12 *Nagaicevs*, 2013 U.S. Dist. LEXIS 985777, *4 (N.D. Cal. July 12, 2013) (Rule
 13 4(f)(3) is “an alternative to service through Rule 4(f)(1)”). Thus, a party does not
 14 need to attempt service first by diplomatic channels or letters rogatory before
 15 seeking alternative service under Rule 4(f)(3). *Rio Props.* at 1015; *Likas v.*
 16 *Chinacache Int’l Holdings, Ltd.*, No. cv-19-6942-FMO-SSx, 2020 U.S. Dist. LEXIS
 17 90923, *5 (C.D. Cal. Jan. 29, 2020) (other than limits by international agreement,

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24 ¹³ Civil Rule 4(h)(2) states in pertinent part:

25 a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit
 26 under a common name, must be served: ... (2) at a place not within any judicial district of the United States,
 27 in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).

28 ¹⁴ Civil Rule 4(f)(3) states in pertinent part:

 Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person
 whose waiver has been filed—may be served at a place not within any judicial district of the United States:
 ... (3) by other means not prohibited by international agreement, as the court orders.

1 “Rule 4(f) imposes no limitation on court’s authority to authorize alternative means
2 of service....A plaintiff need not pursue other methods of service before requesting
3 ... an alternative method of service.”)

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5 To invoke Rule 4(f)(3), the method of service must provide the Foreign
6 Defendants due process. *Rio Props.* at 1014, 1016. To do so, “the method of service
7 ... must be ‘reasonably calculated, under all the circumstances, to apprise interested
8 parties of the pendency of the action and afford them an opportunity to present their
9 objections.’” *Rio Props.* at 1016–17 (citation omitted). Delivering copies of the
10 Complaint, translated into the language of each of the unserved Foreign Defendants,
11 which the Government has done, is not required but helps satisfy that test. *CJ E&M*
12 *Am., Inc. v. IQuiyi, Inc.*, No. 18-5771-PA-JEMx, 2018 U.S. Dist. LEXIS 236120,
13 *11 (C.D. Cal. August 13, 2018) (permitting service of Chinese company upon U.S-
14 based counsel with English and Chinese versions of complaint). Indeed, in the
15 instant case, each of these Defendants knows that this case is pending and seemed
16 ready to state their objections at the June 24th conference. *See Serenium, Inc. v.*
17 *Zhou*, No. 20-cv-02132-BLF, 2020 U.S. Dist. LEXIS 94572, *11 (N.D. Cal. May
18 29, 2020) (service of U.S.-based counsel reasonably calculated as defendants have
19 actual notice of lawsuit and specially appeared through U.S. counsel).

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21 Rule 4(f)(3) provides the Court with flexibility to permit service on the Foreign
22 Defendant’s counsel or even by email. “[T]rial courts have authorized a wide variety
23 of alternative methods of service including publication, ordinary mail, mail to the
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defendant's last known address, **delivery to the defendant's attorney**, telex, and **most recently, email.**" *Rio Props.*, 284 F.3d at 1016 (emphasis added) (citations omitted). Thus, the Rule does not require any particular method of service—only that the Court select a method reasonably calculated to provide the defendant with notice and an opportunity to respond. *Rio Props.* at 1017. This "unshackles" the district court, *id.*, leaving the decision to the district court's sound discretion. *Id.* at 1016.

B. Service through U.S.-based counsel would apprise the Foreign Defendants here as they already know about this case because of this long-pending MDL, they have already secured U.S. counsel (or are affiliated with a Defendant that has), and are affiliated with a Defendant that has already been served.

Under the circumstances here, service upon the Foreign Defendant's United States-based counsel is appropriate. The Northern District of California recognizes that service upon counsel "is a common form of service ordered under Rule 4(f)(3)." *Richmond Techs., Inc. v. Aumtech Bus. Sols.*, 2011 U.S. Dist. LEXIS 71269, 2011 WL 2607158, *3 (N.D. Cal. 2011). In *Rio Properties*, the seminal case involving Rule 4(f)(3), the Ninth Circuit affirmed the district court's decision to authorize service via email to a Costa Rican entity. *Rio Props.* at 1017. The court held that the plaintiff needed only to show that the facts and circumstances necessitated the court's intervention—not that plaintiff exhausted every permissible means of service. *Id.* at 1016. In a recent Northern District of California case, the China-based

1 defendants already had U.S.-based legal counsel, and thus the district court found
2 that service to them was “‘reasonably calculated’....” *Juicero, Inc. v. iTaste Co.*, No.
3 17-cv-01921-BLF, 2017 U.S. Dist. LEXIS 86033, *9 (N.D. Cal. June 05, 2017),
4 citing *Rio Props.*, 284 F.3d at 1017, *Richmond Techs.* at *13.

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6 Here, service through U.S.-based counsel meets that test as the Foreign
7 Defendants or their affiliated Defendants already have counsel, who can easily
8 locate their clients and communicate with them regarding the lawsuit. In a 2012
9 decision from *In re TFT-LCD (Flat Panel) Antitrust Litigation*, the Northern District
10 of California granted plaintiff’s request for service to U.S. counsel of Chunghwa
11 Picture Tubes, a defendant here. *Rockwell Automation v. AU Optronics Corp. (In re*
12 *TFT-LCD (Flat Panel) Antitrust Litig.*), Nos. M-07-1827-SI, MDL-1827, C-12-
13 2495-SI, 2012 U.S. Dist. LEXIS 96689, *37–38 (N.D. Cal. July 10, 2012). The
14 court, having already “granted a number of similar motions,” granted plaintiff’s
15 request (while saving defendant the time and expense of an opposition) since
16 defendant had actively participated in the MDL for years. *Id.* at *38. Because this is
17 the same situation, this Court should grant the Government’s request here.

18
19 A 2020 decision only bolsters the Government’s position. In *Likas*, the plaintiff
20 had started to pursue service through the Hague Convention, but then moved for
21 alternative service on defendant’s U.S. Counsel. 2020 U.S. Dist. LEXIS 90923, *2–
22 3 (C.D. Cal. Jan. 29, 2020). The Court held that it would permit service through
23 U.S. counsel because such service comports with due process, even if the plaintiff
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1 had not finished its process with the Hague Convention. *Id.* at *7; *See Celgard, LLC*
2 *v. Shenzhen Senior Tech. Material Co. (US) Research Inst.*, No. 19-cv-05784-VKD,
3 2019 U.S. Dist. LEXIS 187670, *3, 2019 WL 5550039 (N.D. Cal. Oct. 28, 2019)
4 (granting service via email and Federal Express on U.S. counsel of a Chinese
5 corporation because the defendant had actual notice of the lawsuit).
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8 Here, the Foreign Defendants know about this case from a variety of sources.
9 They have been parties to similar cases, starting with the criminal proceedings
10 nearly two decades ago and this MDL. Most have their own counsel in this case, and
11 those that do not are affiliated with other Defendants who do. Thus, they have either
12 implicit or knowledge of this case.
13

14 Additionally, there is no reason to delay this case by requiring the Government to
15 use less efficient means of service for the 34 Foreign Defendants located in 11
16 different countries. *See Victaulic Co. v. Allied Rubber & Gasket Co.*, No. 3:17-cv-
17 01006-BEN-JLB, 2020 U.S. Dist. LEXIS 82150, *2 n.3 (S.D. Cal. May 08, 2020)
18 (Hague Convention doesn't impose an obligatory time frame, and for example, in
19 China, where five Foreign Defendants are located, "service of process will take up
20 to two years or more, with proofs of service being returned an average of 1 to 5
21 months after service occurs. This means there is a wait window of two years with no
22 interim information provided."); *EGI-VSR, LLC v. Coderch*, No. 18-12615, 2020
23 U.S. App. LEXIS 19809, *8 (11th Cir. June 25, 2020) (letters rogatory "can take at
24 least twelve months to complete"). Thus, service through U.S. counsel will not only
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1 provide Defendants’ due process but also will expedite resolution of this case on its
 2 merits.

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 4 Twenty-five of the 34 unserved Foreign Defendants are represented by U.S.
 5 counsel already. Of the 11 remaining, all but one is affiliated with Defendants that
 6 are already represented by stateside counsel and have been represented by that firm
 7 for years¹⁵—not only that, but seven of the eleven groups of Defendants include an
 8 entity here in the United States that has already been served. Thus, service on their
 9 U.S. counsel is reasonably calculated to apprise them of this lawsuit the Foreign
 10 Defendants have known about for years.

11 **C. Neither the Hague Convention nor any international agreement**
 12 **precludes this Court from permitting service through U.S. counsel.**

13 **1. The Hague Convention does not apply because service of U.S.**
 14 **counsel does not require transmitting anything abroad.**

15 Because service to counsel here in the United States “does not require the
 16 delivery of documents abroad,” the Hague Convention does not apply. *Likas*, 2020
 17 U.S. Dist. LEXIS 90923, at *6 n.6, *see also Calista Enter., LTD v. Tenza Trading*
 18 *LTD*, 40 F.Supp.3d 1371, 1376 (D. Or. 2014) (citations omitted), *Vanderhoeft v.*
 19 *China Auto Logistics, Inc.*, 2019 U.S. Dist. LEXIS 205798, *7–8 (D.N.J. Nov. 26,
 20 2019) (citations omitted). In this, the Court ruled that “service on foreign
 21 defendants, even those who are signatories to the Hague Convention, is proper under
 22 Rule 4(f)(3) where the foreign defendants have domestic subsidiaries and/or counsel
 23 and where service does not require transmittal abroad.” *CRT*, 2008 U.S. Dist.

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¹⁵ Thai CRT is the exception.

1 LEXIS 111384, *32, citing *Schlunk*, 486 U.S. at 707. The Court outright rejected
2 Defendants' argument to the contrary: "Defendants' argument that service under
3 Rule 4(f)(3) is somehow prohibited by the Hague Convention in the present
4 circumstances is, accordingly, without support." *Id.* "Because Koninklijke and
5 Toshiba have domestic subsidiaries and domestic counsel, transmittal abroad for
6 service is not required." *Id.*

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9 In *Calista*, while granting service through U.S.-based counsel, the court added
10 that its decision did not implicate the Hague Convention because service would
11 occur in the United States. 40 F. Supp.3d at 1376. In other cases, the Northern
12 District of California has continued to recognize that service upon defendants' U.S.
13 counsel does not implicate the Hague Convention. *See Richmond Techs.*, 2011 U.S.
14 Dist. LEXIS 71269 at *42 (citations omitted). Citing to the U.S. Supreme Court, that
15 court held that "because the Hague Convention only applies if the law of the forum
16 state requires service of documents abroad, the Hague Convention is not a barrier to
17 any alternative service that will be performed domestically." *Id.*, citing
18 *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 700 (1988), *FMAC*
19 *Loan Receivables v. Dagra*, 228 F.R.D. 531, 534–35 (E.D. Va. 2005) (ordering
20 service on domestic counsel under Rule 4(f)(3) and finding that Hague Convention
21 would not apply because service would be occur in the United States).

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24 Because the Government seeks to serve the Foreign Defendants' U.S. counsel,
25 the Hague Convention is not triggered since 25 of the 35 Foreign Defendants are
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1 already represented by U.S. Counsel and 10 of the remaining 11 are affiliated with
 2 Defendants who already have counsel here. Thus, there is nothing to transmit
 3
 4 overseas.

5 **2. Even if a country is a signatory to the Hague Convention, the**
 6 **Convention does not bar service through counsel.**

7 Additional support for permitting this type of service is that the Hague
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 9 convention itself does not bar it. The Northern District of California has held that
 10 “service on [d]efendants’ U.S.-based attorney is permissible because the Hague
 11 Convention does not bar this type of service.” *Juicero*, 2017 U.S. Dist. LEXIS
 12 86033, *6. A second decision from the Northern District of California determined
 13 that “numerous courts have authorized alternative service under Rule 4(f)(3) even
 14 where the Hague Convention applies.” *Richmond Techs.*, 2011 U.S. Dist. LEXIS
 15 71269 at *41. This is “true even in cases involving countries that [...] have objected
 16 to the alternative forms of service permitted under Article 10 of the Hague
 17 Convention.” *Id.* Thus, “[n]othing in the Hague Convention prohibits such service.”
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 19 *Id.* at *44, citing *RSM Prod. Corp. v. Friedman*, No. 06-civ-11512-dlc, 2007 U.S.
 20 Dist. LEXIS 58194, 2007 WL 2295907, *3 (S.D.N.Y. Aug. 10, 2007) (“The Hague
 21 Service Convention does not prohibit an order pursuant to Rule 4(f)(3) permitting
 22 service through American counsel.”).

26 In *Richmond Technologies*, the plaintiff moved to serve an Indian company
 27 through its U.S. counsel. 2011 U.S. Dist. LEXIS 71269. The defendant objected
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1 because India was a signatory to the Hague Convention, but the court rejected that
 2 argument. *Id.* at *44–45. The Northern District of California also credited plaintiff’s
 3 urgency argument because there was no evidence the Hague Convention methods
 4 would be more efficient than Rule 4(f)(3)’s alternative service. *Id.* at *44. In that
 5 case, like here, the defendants had actual notice of the action and an on-going
 6 relationship with its counsel, so the Court permitted service on U.S. counsel. *Id.* at
 7 *45–46. Along with India, the same applies to defendants principally located in the
 8 same countries as the Foreign Defendants:¹⁶ 1) China,¹⁷ 2) Hong Kong,¹⁸ 3) Japan,¹⁹
 9 and 4) South Korea.²⁰ (The following countries are not signatories to the Hague
 10 Convention and no international agreement bars Rule 4(f)(3) service to the Foreign
 11 Defendant entities located there: 1) Indonesia,²¹ 2) Malaysia,²² 3) Singapore,²³ 4)
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17 ¹⁶ As of 2019, Brazil is a new signatory to the Hague Convention.

18 ¹⁷ *Likas*, 2020 U.S. Dist. LEXIS 90923, *6 (C.D. Cal. Jan. 29, 2020), citing *Juicero*, 2017 U.S. Dist. LEXIS 86033, (N.D. Cal. 2017), *Vanderhoef*, 2019 U.S. Dist. LEXIS 205798.

19 ¹⁸ *Facebook, Inc. v. Banana Ads., LLC*, No. C-11-3619-YGR, 2012 U.S. Dist. LEXIS 42160, *7, 2012 WL 1038752 (N.D. Cal. Mar. 27, 2012) (granting alternative service via email under Civil Rule 4(f)(3) not prohibited by
 20 international agreement, although a signatory to the Hague Convention).

21 ¹⁹ *Xilinx, Inc. v. Good Kaisha IP Bridge I*, 246 F. Supp. 3d 1260, 1264 (N.D. Cal. 2017) (permitting service on U.S.-
 22 based counsel for Japanese company as “service under Rule 4(f)(3) would [not] violate an international agreement,
 23 and the Hague Convention is no bar.”), citing *Richmond Techs.*, at *12; *Hawkins v. Bank of Am., N.A.*, No. 17-cv-
 01954-BAS-AGS, 2018 U.S. Dist. LEXIS 57758, *9, 2018 WL 161941 (S.D. Cal. Apr. 04, 2018) (same), citing
Xilinx, 246 F. Supp. 3d 1260, *Liberty Media Holdings, LLC v. March*, No. 10-cv-1809-WQH-BLM, 2011 U.S. Dist.
 LEXIS 5290, 2011 WL 197838, *2 (S.D. Cal. Jan. 20, 2011) (permitting email service).

24 ²⁰ *Carrico* at *4 (N.D. Cal. May 10, 2016) (although the Republic of Korea is a party to the Hague Convention and
 25 has objected to its service via postal channels, service on defendant through U.S.-based counsel does not implicate
 that provision.), citing *In re LDK Solar Sec. Litig.*, No. C-07-05182-WHA, 2008 U.S. Dist. LEXIS 90702, 2008 WL
 2415186, *3 (N.D. Cal. June 12, 2008).

26 ²¹ *Exp.-Imp. Bank of the U.S. v. Asia Pulp & Paper Co.*, No. 03-civ-8554-LTS-JCF, 2005 U.S. Dist. LEXIS 8902, *5,
 2005 WL 1123755 (May 11, 2005) (“Indonesia is not party to any applicable treaty or agreement” related to service
 27 under Civil Rule 4(f)) (citations omitted); *Dee-K Enters., Inc. v. Heveafil SDN. Bhd.*, 174 F.R.D. 376 (E.D. Va. 1997).

28 ²² *AngioDynamics, Inc. v. Biolitec AG*, 780 F.3d 420, 428–29 (1st Cir. 2015) (affirming service on U.S.-based counsel
 and by email per Rule 4(f)(3) for Malaysian company); *Dee-K Enters., Inc. v. Heveafil SDN. Bhd.*, 174 F.R.D. 376
 (E.D. Va. 1997) (Malaysia is not a party to the Hague Convention “or any other applicable treaty or agreement”).

1 Taiwan,²⁴ and 5) Thailand.²⁵

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3 Thus, even if a country is a signatory to the Hague Convention, this Court is
4 not beholden to it. The Hague Convention, even if a country has certain objections
5 to it, does not specifically preclude service on stateside counsel under Rule 4(f)(3)—
6 especially when the Foreign Defendants and their counsel have notice of the case,
7 the service through the Hague Convention will unduly delay this matter, and due
8 process is accomplished with service on U.S. counsel.

9 **IV. CONCLUSION**

10 The Government respectfully requests that the Court permit it to service the
11 Foreign Defendants through their United States based counsel because such service
12 will provide Defendants with due process and is not prohibited by international
13 agreement.
14

15 Dated July 10, 2020

By: /s/ John A. Girardi

John A. Girardi

Attorney for Plaintiff,

the Government of Puerto Rico

21 ²³ *Assef v. Doe*, No. 15-cv-01960-MEJ, 2016 U.S. Dist. LEXIS 41597, *9, 2016 WL 1191683 (N.D. Cal. Mar. 28,
22 2016) (“Singapore is not a member of the Hague Convention, but the Court is unaware of any international agreement
23 prohibiting service by email there.”), citing *U.S. v. First Coast Meat & Seafood*, 452 F. Supp. 2d 1348 (2006); see
Taylor Made Golf Co. v. Individuals, No. 20-60468-civ-SMITH, 2020 U.S. Dist. LEXIS 109840, *3 n.1 (S.D. Fla.
Apr. 09, 2020).

24 ²⁴ *Fourte Int’l Ltd. BVI v. Pin Shine Indus. Co.*, No. 18-cv-00297-BAS-BGS, 2019 U.S. Dist. LEXIS 8723, *6–7,
25 2019 WL 246562 (S.D. Cal. Jan. 17, 2019) (granting service on U.S.-based counsel for Taiwanese company since
Taiwan is not a party to Hague Convention and no international agreement prohibits it), citing *Tatung Co. Ltd. v. Hsu*,
No. SA-CV-13-1743-DOC-ANx, 2015 U.S. Dist. LEXIS 179201, 2015 WL 11089492, *2 (C.D. Cal. May 18, 2015)
26 (other citations omitted); *ATS Claim, LLC v. Epson (In re TFT-LCD Antitrust Litig.)*, No. M-07-1827-SI, 2009 U.S.
Dist. LEXIS 93448, *15 (N.D. Cal. Oct. 06, 2009) (same).

27 ²⁵ *Facebook*, 2012 U.S. Dist. LEXIS 42160, *7 (N.D. Cal. Mar. 27, 2012) (permitting Rule 4(f)(3) service to Thai
company as Thailand is not a party to Hague Convention and no international agreement prohibits it); *Craigslist, Inc.*
28 *v. Meyer*, No. C-09-4739-SI, 2010 U.S. Dist. LEXIS 89955, *6–7, 2010 WL 2975938 (N.D. Cal. July 26, 2010)
(same).

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1126 Wilshire Boulevard, Los Angeles, CA 90017-1904.

On July 10, 2020, I served true copies of the following document(s) described as on the interested parties in this action as follows: **GOVERNMENT OF PUERTO RICO'S MOTION TO SERVE FOREIGN DEFENDANTS THROUGH THEIR UNITED STATES-BASED COUNSEL UNDER FEDERAL RULE CIVIL PROCEDURE 4(F)(3)**

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 10, 2020, at Los Angeles, California.

/s/ Kali V. Fournier
Kali V. Fournier